

MEETING  
STATE OF CALIFORNIA  
SECRETARY OF STATE  
VOTING SYSTEMS PANEL

SECRETARY OF STATE  
1500 11TH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 11, 2004

10:19 A.M.

Reported by: Michael Mac Iver

Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## APPEARANCES

## PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrel (via telephone)

Mr. John Mott-Smith

Ms. Caren Daniels-Meade

Mr. Tony Miller

Mr. David Jefferson

Mr. Lee Kercher

## STAFF

Mr. Michael Wagaman

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## INDEX

## Page

5	Diebold Election Systems, Inc.	6
	b. GEMS Software	
	c. AccuVote-OS	
	Kim Alexander	30
	Deborah Hench	33
	Jim March	36
	Bev Harris	40
	Maureen Smith	44
	Dennis Paull	46
7	Other Business	63
	Maureen Smith	64
	Dennis Paull	65
	Adjournment	68
	Reporter's Certificate	69

## PROCEEDINGS

CHAIRPERSON KYLE: Good morning. We're expecting one more panel member, who I'm going to try to track down to see if she is able to make it or not. I have conflicting reports, but she's not here.

Before we get started, for those of you who may not have picked anything up, there's agendas and public documents on the back table, so pick them up if you want to see anything.

Otherwise, I'm going to get started and I want to welcome everyone this morning to the Voting Systems and Procedures Panel. Welcome to the public, to county officials, I see a few folks here from a couple different counties. So welcome, thank you for coming. A couple vendor representatives, concerned activists and concerned public. And I don't think the press is here, but thank you very much.

My name is Mark Kyle, I'm the Chair of the panel. We have a couple of just procedural things I'll mention.

Marc Carrel, our Vice-Chair, is unable to attend today. He's joining us by phone this morning.

Marc, can you acknowledge by phone?

PANEL MEMBER CARREL: Yes, I am here.

CHAIRPERSON KYLE: Yes, he's here. Can you hear us okay?

PANEL MEMBER CARREL: I can hear you fine.

CHAIRPERSON KYLE: Okay, good. So try not to say anything unless it's really necessary.

And I want to welcome Lee Kercher, the gentleman two seats to my left, who is our new CIO for the agency. He has a long background in technology and state agencies and I think brings a needed combination of the knowledge of how to make things happen within the State of California, as well as how to push forward the agenda on innovative and new technology projects. And certainly, as everyone here knows, we've been in the middle of that for the last year and a half with no end in sight. So he is taking over for Judy Reilly, who was acting-Chair of that department and sat here on the panel. And Lee is taking over for Ms. Reilly, who will go back to her old functions.

So welcome, Mr. Kercher.

And we will go through the agenda, have our usual staff report. The panel may ask questions from the vendor or from the staff, and from counties, if any counties that are affected by this, and then we'll open it up to comments so any folks who might not have been called on but want to speak can speak at that time. And then if we're at an appropriate place to make a decision, we'll make a vote and move forward, I can say at this point.

So the last thing I'm going to ask is that people

shut off their cellphones or put them on vibrate or silent, along with their pagers. And then let's get started.

So, Mr. Wagaman, are you prepared to go forward?

Right now on our agenda, I think we have only two things on the agenda for today, and that this was duly noticed, was the Diebold Elections Systems AccuVote-OS.

MR. WAGAMAN: Correct. That would be Item 5C. It also relates in part to Item 5B, which would be the GEMS software this panel has already looked at.

CHAIRPERSON KYLE: And you'll elaborate on that?

MR. WAGAMAN: Yes. It will be part of the staff report.

CHAIRPERSON KYLE: Okay. And I was under the belief that there was prepared to be discussion on Ink-A-Vote procedures, has that been rolled over?

MR. WAGAMAN: It was on the procedures that relate to Ink-A-Vote and Mark-A-Vote systems and residual votes on those systems. Due to some staff transitions, I was unable to complete that report prior to this meeting and I would ask the panel's indulgence to roll over that item to the next hearing.

CHAIRPERSON KYLE: Okay. All right.

PANEL MEMBER CARREL: I'm having difficulty hearing Mr. Wagaman.

CHAIRPERSON KYLE: We'll ask him to speak up, Mr.

Carrel.

MR. WAGAMAN: I'll speak up, Mr. Carrel.

CHAIRPERSON KYLE: The other thing is at the end of the meeting I want to talk about just formalizing either the cancellation or postponement of some scheduled hearings, as well as scheduling of some new hearings, so that we can keep on track with trying to meet as frequently as possible to address all issues pertaining to the November election. So after this presentation, that will be one procedural point.

So go ahead, Mr. Wagaman.

MR. WAGAMAN: All right. The application as accepted correlates to Item 5C on the agenda, the Diebold Election Systems, Inc. AccuVote-OS. The application consists of three components. The first component being GEMS version 1.18.19. This version was previously recommended for certification from the panel previously. That recommendation was limited to use with the AccuVote-TS system. This would then be bringing forward for certification with the OS system.

GEMS is the election management system software package. It's general operation as related to the OS is it's used to set up ballot definitions, just as with the TS. It then programs the memory card, flash memory card, for the OS, that's done through direct connection between and

AccuVote-OS and the GEMS server. Those cards are then inserted into individual AccuVote-OSes. And then at the end of the process, the reverse happens where those mechanized cards are removed from the AccuVote-OSes, inserted again into an OS that is connected directly into the server and those results are then uploaded from the memory card to the GEMS server, and then compiled and tabulated. The vote results are then compiled and tabulated.

The changes to GEMS from version 1.18.18. The previously certified version of 1.18.19, we've previously covered at the last hearing. A lot of the security changes previously covered relate specifically to the TS more than the OS. There is one change of note, it actually relates to the operation of the OS. There was a previously identified issue in Alameda and San Diego Counties where results were being misassigned during remote upload. Well, what happened is if multiple sites were uploading at the same time, sometimes the program would become confused and assign the wrong rotation rules to some of those results, so a vote would be assigned to the wrong person. Those would then be caught later on when the results were actually brought in, the official results were brought in on a memory card. The GEMS program has been corrected to correct for that error in the previous version.

The second and third components of the application



relate to the AccuVote-OS itself. The AccuVote-OS is a self-contained optical scanning device, it can be used either in the precinct or in the central count location. I'll describe that function momentarily. As previously described, once that memory card is programmed and loaded into the machine, a voter or a poll worker or at the central location would run those ballots through the unit. The unit can be configured to reject or take out ballots that are undervoted or overvoted, particularly they are useful in the precinct count situation. The unit is usually loaded on top of a ballot box, which also comes from the vendor. That ballot box also allows for the sorting of ballots, so for example, a write-in ballot would be separated into a separate portion of the box for later reconciliation.

There are two different version numbers before you. The first is 1.94w. That is the currently certified version. It was originally certified back in 1993. It was last certified in 2000 to be used with the GEMS 1.18.18. So the only change here is certifying it for use with GEMS 1.18.19.

The second version before you is 1.96.4. This would be a new version. The major change between 1.94w and the 1.96.4 are some added functionalities. One, it increases the numbers of parties that the machines can handle from 10 to 30. It's worthy of note that the 1.94 can

still handle a California primary, because we only have the eight party types and the DTS crossover votes for a shadow election is not separate parties with this system, so it can still handle a California primary. The other changes allow a memory card image dump. What that is is previously if there was a problem with a card or somehow it became corrupted, the physical card would have to be transported in order to access that data and try to see if somebody could recover -- to go through the recovery process. The memory card image dump actually allows that potentially corrupted data to be taken off the card and then transmitted that way, so that data can be transmitted electronically, rather than physically, allowing for faster recovery of any potential problems that arise.

A note on the central count issue. There is actually a separate version that is not before the panel today of the AccuVote-OS that is designed solely for central count. The difference in the operation is that that system is connected directly to the GEMS server and uploads the results directly to the GEMS server, rather than to the memory card and then to the GEMS server. So this version could use a central count, but would have that additional intervening step of it going to a memory card and then being uploaded to the GEMS server.

Testing issues. The federal testing was

completed, there is a NASED number assigned, N-1-06-12-12-001. Some parts of the testing were to the 2002 standards, but the overall qualification is to the 1990 standards. State testing was conducted in mid July in Texas. I go into greater length in the staff report. It is the conclusion of staff that the system does meet the requirements of state law.

There were two issues identified worthy of note. One relates to the function of what are called ABO files. What ABO files do is they configure some of the reporting functions from the system. During testing it was identified that those files could also identify some of the preconfigured supervisor functions. They wouldn't change functions, but they would reset the defaults. It was further identified that those files while they were included in the federal testing process, there was not a source code review done on them, so they were tested, there was not a source code review. The files do have some importance because they do affect the audit log because they do back those reports that are printed from the onboard printer on the AccuVote-OS and what information is actually produced on those. So when we get to the actual recommendations, we do have some recommendations for some conditions as related to those files.

The second issue of note relates to security. The

procedures for the AccuVote-OS were amended to add additional security requirements, in line with those additional security requirements previously before the panel on the TS, I believe, and the OS procedures. They are at section 7.3 through 7.8. Some items were dropped that were specific to the operation of the TS. Some additional items were added that were unique to the OS, for example, keeping a log of whenever that ballot box is opened, because whenever the ballot box is opened, there are ports on the back of the OS that then can be accessed. So keeping a log of whenever those ports would be potentially accessible.

Then, in addition, there were some additional security requirements that were added to both the TS and the OS procedures. Those were both posted and distributed to the panel. There were again additional security recommendations that were added into both of those procedures.

Moving on to public comment. In addition to the public comment that had been previously received and previously distributed to the panel at the last hearing, we've received six additional public comments. One was actually received at the last hearing related to the concerns about the ability of the vendor to produce ballots for the November election. One communication was received from a vendor themselves relating to that same issue and

their ability to print ballots for the November election. There was one communication received that related primarily to the April 30th security measures and DREs. And then there are three communications received from Mr. Dennis Paull, one relating to the posting of election results online, one relating to concerns about the ability of the AccuVote-OS to read ballots accurately, and one relating to the posting of results publicly, and also the question was raised in previously submitted testimony.

Moving on to the actual recommendation from staff. Staff recommends the certification of the Diebold Election Systems, Inc. AccuVote-OS versions 1.94w and version 1.96.4, for use with the GEMS version 1.18.19 with the following conditions: The AccuVote-OS version 1.94w is only certified for use with ABO file 194 US. The AccuVote-OS 1.96.4 is only certified for use with ABO file 195/196 US. That the vendor submit a report to the Secretary of State's office detailing the function of the ABO files 194 US and 195/196 US by August 25th, 2004. That's moved back a week from the recommendation in your packets because the meeting was moved back a week. And, four, the vendor submit a copy of the source code for the ABO files 194 US and 195/196 US, again by the August 25th, 2004, date.

That is the conclusion of the staff report, if there are any questions, I'm open.

CHAIRPERSON KYLE: Okay. Panel?

John?

PANEL MEMBER MOTT-SMITH: I have no questions.

CHAIRPERSON KYLE: Mr. Kercher?

PANEL MEMBER KERCHER: Nothing.

CHAIRPERSON KYLE: Mr. Jefferson?

PANEL MEMBER JEFFERSON: Okay. I have a number of questions, and I hope that I can find them quickly enough here.

CHAIRPERSON KYLE: Do you want a second to review them while I go to other folks?

PANEL MEMBER JEFFERSON: What I will do is get to a couple and then while other folks are talking, I'll find the additional ones. But one that jumped out to me, this was in the procedures and it's in section 3.7.11, and 12. The procedure says that the precinct board will immediately transfer by telephone the final results from the precinct to an election central GEMS server, unless otherwise directed by an election official. Well, my question is about this procedure. Do we, in fact, have any counties that use Diebold Systems this way that they transmit preliminary results back directly from the precincts?

MR. WAGAMAN: They sometimes will transmit those additional results over a modem line. That is why there is an additional security measure added to the procedures

relating that there be a backup made of the GEMS server before any unofficial results are uploaded. And then before any official results are uploaded, that the backup be loaded and so the official results go into that backup which is created prior to any unofficial results being transmitted.

PANEL MEMBER JEFFERSON: And I saw that. But my concern is not with the contents of the GEMS server, it's actually with the contents of the votes that are on the DRE itself. Those are not backed up before that telephone call is made. So I guess my question is, so question number one is, do we have any counties that use this procedure? If not, I would actually like to prohibit this procedure. If we do, this strikes me as a dangerous security hole and I would certainly like to deprecate this procedure, if we for some reason can't prohibit it. In other words, DREs that are holding the original copies of the votes really mustn't be put in contact with any other computer before those votes are secured, and this is at a moment before they are secured. I guess that's my concern. So maybe I can ask the panel what their thoughts are.

CHAIRPERSON KYLE: First of all, can you respond to Mr. Jefferson's question? First of all, just the simple question, are there counties that use that procedure, to your knowledge?

MR. WAGAMAN: There are counties that do upload

unofficial results using modem for the OS system, correct.

CHAIRPERSON KYLE: And do you know about how many?

MR. WAGAMAN: I would say it's probably most of the counties will do that for at least some of their precincts. I don't have an exact number for the panel.

PANEL MEMBER JEFFERSON: Well, for those counties that can print the vote totals, can they at least print the vote totals on paper before they make that telephone call?

MR. WAGAMAN: As I recall in the procedures, and I'd have to go back and find the exact language, there is a requirement that they do print those results and post them at the polling place.

PANEL MEMBER JEFFERSON: Before that phone call?

MR. WAGAMAN: That is not currently in the procedures. If the panel wanted to amend that in the procedures, that would be up to the panel's discretion.

PANEL MEMBER JEFFERSON: Well, at the very least, I would have to insist that we do that. But I would actually prefer to eliminate that whole procedure, or certainly rewrite this so it's not encouraged that people do that.

CHAIRPERSON KYLE: Let's stay on that point for a second.

PANEL MEMBER JEFFERSON: Okay.

CHAIRPERSON KYLE: Does the vendor have any



insight on this procedure that you might be able to address further? Are there any counties here that would want to address that?

So for the record, please identify yourself.

MR. SINGLETON: I'm going to let the county go first.

CHAIRPERSON KYLE: Thank you very much.

Ms. Hench.

MS. HENCH: Deborah Hench, San Joaquin County Registrar of Voters.

First of all, this is the OS system, this is paper ballots that have been scanned that these counties, and San Joaquin is not one of them, but I know quite a few of them that do election night upload those results over the modem. Now, you still have your paper ballots, you still have to canvass those, these are unofficial results, they're not official. You have to close the polls and you have to print the totals and compare the totals in the procedures with your rosters with everything else. Everything has to come back to the office where in the canvass we have certify the results, compare it to election night.

PANEL MEMBER JEFFERSON: Actually, I agree with that. So let me just amend my request that the results be posted before that upload phone call is made, and I guess that would satisfy me.

MS. HENCH: I don't think that would make too much of a difference in timeframe.

PANEL MEMBER JEFFERSON: I don't think so either.

MR. WAGAMAN: Just for clarification for staff, was it that they are posted or they are produced?

PANEL MEMBER JEFFERSON: Produced.

CHAIRPERSON KYLE: Ms. Hench, is it your understanding that when you say you don't think that would make much difference is in timing?

MS. HENCH: Well, the precinct officers are going to have to post it anyways as part of the procedure. They have to post it not only at the polling place, but also in the roster of their totals they have to balance. So there are multiple places we do that. And usually they balance before they upload those results anyway, it's just, you know, standard operating procedures.

PANEL MEMBER JEFFERSON: So there wouldn't be any problem with asking that the modem upload be the last thing on there?

MS. HENCH: I don't think that's a problem, and it probably is already probably the recommendation for the precinct, the printing.

PANEL MEMBER JEFFERSON: I'm sorry, I said DRE, I know it's an optical scan system, I just have DREs on the brain, I'm sorry.

CHAIRPERSON KYLE: Any other comments, Ms. Hench?

MS. HENCH: No, that's it.

CHAIRPERSON KYLE: Thank you for your clarification.

PANEL MEMBER JEFFERSON: I had a second question which was --

CHAIRPERSON KYLE: Let me just get that straight, Mr. Jefferson.

PANEL MEMBER JEFFERSON: Okay.

CHAIRPERSON KYLE: It's basically emphasizing that the results are produced prior to the upload of the final results.

PANEL MEMBER JEFFERSON: Printed on paper, right.

CHAIRPERSON KYLE: Produced means printed on paper?

PANEL MEMBER JEFFERSON: Yes.

And it's probably in the procedures and I just missed it, but do the procedures mention the requirement that the results be produced on paper at the precinct?

MR. WAGAMAN: I believe they do. I would have to go back and look for the exact section.

PANEL MEMBER JEFFERSON: Okay. Because I didn't notice it when I was reading them, and so I just wanted to make sure that that should become part of the procedures document, correct? Are we all in agreement on that?

PANEL MEMBER MOTT-SMITH: I'm not sure I am. I'm not sure I understand why if there are paper ballots that exist why you're --

CHAIRPERSON KYLE: Can everyone hear Mr. Mott-Smith?

PANEL MEMBER MOTT-SMITH: I'd like you to explain further, because I don't understand why if there are paper ballots that exist as a record and as a backup to all of these votes, why this extra step is necessary or even desirable.

PANEL MEMBER JEFFERSON: Well, it's only because the paper ballots are not necessarily counted by hand, they are counted by software.

PANEL MEMBER MOTT-SMITH: There is a one percent manual recount.

PANEL MEMBER JEFFERSON: A one percent, that's right. So anyway that's my suggestion. And I don't know, maybe the panel doesn't agree.

CHAIRPERSON KYLE: Can you rearticulate that so I have a good -- your second suggestion being that --

PANEL MEMBER JEFFERSON: That the procedure, which I think she mentioned is normal procedure anyway, that the precinct totals are printed at the end of the day and posted, that that is in fact made one of these procedures, that's all.

CHAIRPERSON KYLE: All right. Any further comment on that? Okay.

PANEL MEMBER JEFFERSON: I mean this is in tune with the general principle that it would be -- so this goes to problems with the auditability of the GEMS server, which we may not get a chance to discuss fully today. But any chance that you have to publish vote totals at the precinct level at the earliest possible stage in the voting process is an improvement in the security. We already do it for DREs, and it is required for DREs, and apparently already done, the vote totals are printed anyway for optical scan counties. It would seem natural to me that we just make that procedure uniform. And since both types of systems, the optical scan and the DREs, feed into the same GEMS systems about which we have concerns anyway, it would just seem to me to make sense to have that safeguard getting the earliest possible copies of the vote totals posted publicly so that there is at least some, in principle, opportunity for public oversight of the vote totals. It's an issue of transparency.

MR. WAGAMAN: And going back to the issue, just for clarification for the panel, it will sections 3.7.10 and 3.7.11 that are relevant. Current procedures require them to produce a tape, it does not require vote posting, and it does it in sequential order with the production of the tape

prior to the upload of transmission results. It doesn't explicitly say you must follow and do this before that, but it is sequentially ordered that process. So just a clarification for the panel.

PANEL MEMBER MILLER: Mr. Jefferson, again a clarification, are we talking about posting or producing?

PANEL MEMBER JEFFERSON: Well, both. The majority required they be produced in 3.7.10. So issue one was producing before the upload.

PANEL MEMBER MILLER: Right.

PANEL MEMBER JEFFERSON: Okay. And issue two is posting the produced results in parallel to the procedure that's already required for DREs, mostly because both of these two systems, the TS and the OS to which we are talking about today both feed into the same GEMS server whose auditability and whose security has been questioned. And so the earlier in the process that you get copies of the vote totals to the public, the more transparent and auditable that system would be.

PANEL MEMBER MILLER: Thank you.

CHAIRPERSON KYLE: We have a suggestion from Ms. Daniels-Meade on how we might modify the wording on that, 3.7.11.

Other points, Mr. Jefferson? Move on to other panel members?

PANEL MEMBER JEFFERSON: Go on to other panel members, thank you.

CHAIRPERSON KYLE: Ms. Jones, I know you came in a little late. Do you have any questions on the materials?

PANEL MEMBER JONES: No.

CHAIRPERSON KYLE: Mr. Miller?

PANEL MEMBER MILLER: No.

CHAIRPERSON KYLE: Ms. Daniels-Meade?

PANEL MEMBER DANIELS-MEADE: No.

CHAIRPERSON KYLE: Mr. Carrel, by telephone?

PANEL MEMBER CARREL: No question. I have a question, but not on what you have said so far.

CHAIRPERSON KYLE: Well, not on what Mr. Jefferson brought up, any questions.

PANEL MEMBER CARREL: Yes, I do have a question.

CHAIRPERSON KYLE: Speak into the telephone, please, Mr. Carrel.

PANEL MEMBER CARREL: The consultant's report talked about an issue regarding the ballot box and how the OS was set up, and that if it was set up with the ballot box and had to be removed in order to access the back panel and it represented manual log procedures for when that would occur because there might be a need to clear a jam, and so if jams occurred, that we should have a log made available. And the recommendation was to change the procedures to

require a manual log of that. I'm just wondering from staff whether that was changed in the procedures, and, if so, where, because I can't seem to find it.

MR. WAGAMAN: Yes. It's section 7.6.4. It was made a more broad issue. The issue was when the box is opened there is a back panel that is normally prevented access because it's in the box, it's blocked by the box. When it's removed, that panel is accessible. So it was made more broad in 7.6.4 not just to reference when the box opened, but anytime that panel is accessible.

PANEL MEMBER CARREL: Thank you.

CHAIRPERSON KYLE: Just for clarity's sake, do panel members have any questions on their own, not elaborations on Mr. Jefferson's question?

I have one question. Can you go back to your statement earlier in your report that you said that the central count version is distinct from the three items that are in front of us today and elaborate on that point?

MR. WAGAMAN: Correct. It's a slightly different firmware version number and it has an additional cord. It's just a cord that connects from the AccuVote-OS directly to the GEMS server, and it's just a functional difference for the uploading of results where when a ballot is run through with this system, what would happen is that ballots are just being accumulated on that flash memory card, they're not



going to the GEMS server, even if it was connected to the GEMS server, they all go into that.

CHAIRPERSON KYLE: What version number is that?

MR. WAGAMAN: That's both for the 1.94w and the 1.96.4. So that's how both those versions operate. They go to the flash memory card and then there is a separate function to upload the results from that flash memory card to the GEMS server. The central count version, which there are several different iterations, they all start with two, like 2.0.1.0, for example. The operation is different where you would have a AccuVote-OS connected directly to the GEMS and when you scan a ballot through, that result goes directly to the GEMS rather than to the flash memory card and then later on being transmitted to GEMS. So it's a slightly different function in how those ballots operate.

CHAIRPERSON KYLE: Okay. Are there any subversions of either 1.94w or 1.96.4?

MR. WAGAMAN: No. Those are the two version numbers. There are other iterations as the development series went up, but those are the two versions that we will be bringing forward for certification. The only subversion, if you want refer to that, relates to those ABO files in the GEMS, there are different iterations of those. The function of those is again to generate reports, so they have different iterations for different states, so like they'll

have a Georgia version.

CHAIRPERSON KYLE: Well, within California?

MR. WAGAMAN: Well, within California. Well, assuming that you went with the staff recommendation and there would only be those two ABO files that would be recommended for those two versions of the OS being brought forward, so there would be no subversions.

CHAIRPERSON KYLE: Do you have any knowledge of which counties are interested in moving or migrating from 1.94w to 1.96?

MR. WAGAMAN: I believe most counties, and the vendor would probably be better suited to address this. Most counties would be staying with their current system right now, so if they have the 1.94w, they would be staying with the 1.94w.

CHAIRPERSON KYLE: Okay. Mr. Singleton, can you address that issue, please?

MR. SINGLETON: For the record, Marvin Singleton.

Mr. Chairman, I believe that there might be four counties out of the total that would be moving to 1.96.4. The rest have stayed at 1.94w in their computer selections.

CHAIRPERSON KYLE: I'm aware of that. But I know that in the March election there was some issue several weeks prior to the election about the migration to 1.96 and that we had to rescind that installation in two counties, I

personally spoke with both counties, much to their chagrin. And I'm just curious whether those two counties, plus other counties, are still interested in migrating to the 1.96 or it doesn't really matter. I'm just kind of curious as to where in the spectrum folks are and where they're headed. And I would ask the counties directly, but I'm assuming that you have knowledge of that.

MR. SINGLETON: Sure. I believe it's Fresno and Marin, the two counties that --

CHAIRPERSON KYLE: Yes.

MR. SINGLETON: I believe they would like to go back to that version, they were comfortable with it. The issue before the March was having someone physically go out there and remove the ROM chips and take them out when they're in the midst of an election preparation. Since we've been working with them and for those that are converting, the timeframe is adequate. So I would think that there may be four or five that would be looking to go to 1.96.4.

CHAIRPERSON KYLE: Okay.

MR. WAGAMAN: And just to provide clarification, the issue in March is that there was a belief at one point that the 1.94w was not going to be able to handle primaries because of that party issue.

CHAIRPERSON KYLE: Correct.

MR. WAGAMAN: It was later discovered that was not the case. And so the version is compliant with state law and can conduct a California primary election.

CHAIRPERSON KYLE: Those are all my questions.  
Mr. Jefferson, do you have any further questions?

PANEL MEMBER JEFFERSON: Yes, thanks. This is about those ABO files. I want to make sure I understand what they do. The consultant indicated that they are related to various reports that can be produced in different jurisdictions, different states. Are we sure that they have nothing to do with the way the votes themselves are tabulated, as for example California specific rules or Georgia specific rules or something like that. Do we know that?

MR. WAGAMAN: Their purpose is again to effect those, to generate those reports. One of the issues that was identified is that it can set some of the functions, it will also configure those to a certain configuration, if you are switching ABO files. So if you switch to an ABO file, you may put in a configuration that's specific for Georgia, if you load the Georgia ABO file, so that potentially, you know, if Georgia allowed crossover voting, for example. Those kind of issues can arise and that's part of the reason why we're looking at two ABO files that we tested, that we know don't have those issues.

PANEL MEMBER JEFFERSON: Right.

MR. WAGAMAN: And we're requesting then the report from the vendor on the function of those and if he calls on those to say, look, make sure that there aren't any of those conflicts. During testing we did look specifically for those issues on those two versions that are recommended for certification, the 1.94 US and the 195/196 US.

PANEL MEMBER JEFFERSON: Right. So the consultant though actually recommended the removal of those other ABO files not relevant to California, and it appeared to me from his report that it is an easy error to make to select a different ABO file than one of the legal California ones, and that possibly somebody could do that by mistake?

MR. WAGAMAN: It's functionality is drop down box, so whatever that --

PANEL MEMBER JEFFERSON: Right.

MR. WAGAMAN: There's a drop down box button you select.

PANEL MEMBER JEFFERSON: Right. And there are like eight or nine items in the drop down box and you have to select one of the right two, and they all look like 1.94w.

MR. WAGAMAN: The reason that was not put in the staff recommendation explicitly is because we would only be certifying those two versions and the vendor would not be

allowed to, as asked already, cannot sell uncertified software.

PANEL MEMBER JEFFERSON: This would in effect require recertification?

MR. WAGAMAN: Right. If they want to install it.

PANEL MEMBER JEFFERSON: That's what I thought, okay.

Thank you, no more.

CHAIRPERSON KYLE: Any other questions from the panel?

Okay. Then why don't we have some public.

Ms. Alexander.

MR. WAGAMAN: Is there a time limit the panel is going to be working with?

CHAIRPERSON KYLE: Give everybody a few minutes, we only have five requests. Five minutes.

MS. ALEXANDER: Good morning. I'm Kim Alexander with the California Voter Foundation.

First of all, I want to endorse David Jefferson's suggestion that we do post the results from the optical scan voting systems if it is a precinct count system at the polling place. I'm not sure whether any of our counties actually once they have scanned those ballots at the precinct and use that precinct scanner to come up with a precinct total whether those ballots ever get scanned again.

So we're depending on all of the software at the precinct and the hardware to work properly.

And since those precinct electronic vote counts become the components of the final vote count, we need to make sure that there is some transparency and auditability by the public to make sure that those results that are compiled at each polling place match the results that come out in the final vote count. So that's the benefit. Since the county is already producing this audit tape that shows what the aggregate totals are for this optical scan precinct counting machines, they could just produce a second tape or they could make that available somewhere at the county election office. I mean it doesn't need to be a huge headache.

One recommendation I have because we like to see a lot of precincts posting results both for optical scan and precinct optical scan, which is the kind of system we're talking about, and also for the touchscreens, it would be very simple for the county elections department, for example, to create a little chart that has all the races in each precinct and either they can give to the poll workers and the poll workers can fill those charts out with the election results. So have it already preset up and just plunk in the numbers and post that. A lot of the touchscreens can't produce this kind of results, this

aggregate vote total, but if they can't there are other ways that we can provide that accountability at the polling place. It gives the public the tool they need, as David Jefferson said, to get these results as early as possible in the process so that they can be compared later.

So my recommendation is that, if it is true, and I'm curious to know if Mr. Wagaman or anyone else with the counties could clarify, but if it is true as I suspect that our precinct count optical scan counties are not actually running every single ballot back through a scanner at the central office as part of the canvassing process, then we really need to have summary results posted at polling places, because we're completely dependant on all the software and hardware at each polling place to be working perfectly at that point. And that's a big expectation.

CHAIRPERSON KYLE: Okay. Good suggestion.

MS. ALEXANDER: Thank you.

CHAIRPERSON KYLE: Mr. Wagaman, can you address that issue that Ms. Alexander brought up?

MR. WAGAMAN: The counties do not typically in a precinct count situation, the ballots are not scanned twice. They will be scanned at the precinct, and then they would be counted as part of any recount or one-percent manual recount, they would be counted by hand in that situation. There will be some double scanning of some ballots, those



ballots that I described earlier that are sorted out separately, because they either had an overvote or an undervote, they have a write-in, some of those issues, there may be a duplicate scanning in that situation, but not all ballots would not fall under that category.

CHAIRPERSON KYLE: Okay. Thank you.

Deborah Hensch.

MS. HENSCH: Deborah Hensch, San Joaquin County Registrar of Voters.

Giving a log to our precinct officers to chart down all results is too time consuming. Their job is to close the polls, make sure the ballots are secured. They do have to do the total number of voters who have come in, versus the inventory system of the paper ballots. Posting another step, they're going to hand count these votes and post them or are you going to have them printed out and rerecord? It's easier to print a second record and post it than it is to stand there and try and hand write all this information. We want them to come in with our votes. We'll have a handful of scanners out there at a couple of precincts, but the memory cards are going to be uploaded in our office, not at the location, and they're only going to see the total printout at the time that they close the polls.

We do run practically every paper ballot through

our voting system twice. Because we're looking for write-ins, we have to run that whole precinct to count all the write-ins where you have to have them come out and say we have write-ins here. So it doesn't tally the write-ins, that's a manual process with paper. So you must look at them and you must go through those ballots. And we still have the mandatory one-percent recount, I mean that is part of it.

And I can guarantee you that in San Joaquin County there is probably going to be a very close race that we have a recount anyway. Every general election in the last I don't know how many elections we've had a state race that includes our county there has been a manual recount.

For the counties, you're trying to get precinct officers to volunteer to work 16-hour days and then you keep adding more and more requirements on them. We're lucky that they're breathing at the close of polls. They can tally and close it, but it just adds too many more additional requirements. These people are volunteers, we train them in one day, we put them in there praying that they're going to follow every requirement we have. It's a difficult job.

In our county we have 1,600 people for polling places that we have to fill, plus we have field inspectors to run out there for air conditioning and things of that nature. So I just hope you understand that while we take

our jobs very seriously, we do have to do the canvass when it comes, and we have the paper. If the paper audit doesn't match, we hand count that precinct, no matter whether it's part of the one-percent manual recount or not, because we want to know if there's a problem.

The other thing, provisional ballots will not be on the counts on the precinct on election night. That's part of a manual process that we have to do in our office.

So, you know, just so you kind of get an idea, these people are there to do what we ask them to. They're honest people, they want to do their job, and posting a polling place, a receipt or posted printout, is not going to make any difference to the voters when they come in and look at my website for the election results. Why it makes a difference to me when I bring it in and that count is different and we audit how many people signed the roster and all those things. So we do the audit in 28 days. Election night is an unofficial count, it is there to provide candidates with some idea of where they stand in the end results, it's not the official count. And that's all I have to say.

CHAIRPERSON KYLE: Thank you.

Any questions from the panel.

Thank you, Ms. Hench.

Bev Harris.

MS. HARRIS: Can I get Jim March to go right before me?

CHAIRPERSON KYLE: I suppose so. Jim March.

MR. MARCH: Good morning.

CHAIRPERSON KYLE: Jim, would you just identify yourself on the record, please.

MR. MARCH: Yes. Jim March, Black Box Voting, and I'm on the Board of Directors.

The first thing is I'm going to have to object to the testimony that's been given for you by the so-called Diebold representative, because he's actually an employee of a PR firm that Diebold hired for damage control, he's not a Diebold employee, and what he says to you, he's not saying as a Diebold employee, you can't hold Diebold responsible for his words.

So I'd like a decision if possible on the propriety of Diebold being asked to provide testimony and sending a PR company to do so.

CHAIRPERSON KYLE: Your concern is duly noted, Mr. March.

MR. MARCH: Okay.

CHAIRPERSON KYLE: But just to answer your question, Mr. Singleton has been authorized by Diebold as an agent of Diebold. Whether their contractual arrangement with the PR firm, et cetera, et cetera, under agency law,

that means that if they delegate that agency then he has the authority to do so. I'm going to take at face value that his representations were in fact accurate. If they're not, then Diebold is in serious trouble. They were fairly vague of I think about four or five counties. That's my knowledge as well, so it comports with it. I hear your concern and I understand your point.

MR. MARCH: Thank you. One of the more famous episodes in the life of Galileo Galilee was when he set up one of his best telescopes at a government office in Italy. He pointed it at the night sky, got a good focused view of Jupiter and its four moons, and right there with his own eyeball he was seeing four moons in orbit around Jupiter going around something other than the Earth. He then stepped away from the telescope and he said, now, Prince, you take a look, see the same thing I've been seeing. And the prince started to get up and the prince's political advisors say, whoa, whoa, whoa, sit right back down there, sit right back down. Because the prince's political advisors knew that it was too dangerous politically to know something about Catholic cosmology that it was wrong.

Now, last year starting on January and then our own research finishing up around June, July of last year, Bev Harris looked through a telescope at the GEMS product. She first downloaded through Google, found the GEMS product,

looked at it, studied it, and found that its security simply stank. It was substandard and a very credible claim can be made that GEMS is rigged for vote fraud. A very credible claim. Now, for the last year, just about one year ago today was when I first saw the GEMS product, I looked through the telescope and said, whoa, yes, it does stink. Since then a number of people have looked through the same telescope. Ben Cohen of Ben and Jerry's Ice Cream looked through the telescope and he's about to release a new flavor of ice cream called Fudged Election Confession. All right.

A few days ago on national television Howard Dean looked through Bev Harris' telescope. He had Bev Harris guide him through the steps to alter the vote totals, the audit trail, the password, and everything else inside GEMS. And he looked at that and said it strange like you would expect, this is Howard Dean, he turned around over his shoulder and said to the camera, has Kevin Shelley seen this.

And that's the problem, folks, because for the last year I've been trying to get you folks, the members of the panel, to look through the same telescope. I've reported on paper what I saw. I provided you all just links to the actual GEMS product to sample voting data. But you didn't need to get that from me, any of you could have driven over to Alameda County and walked into Brad Clark's

office and said, Brad, fire up that GEMS box and let's kick the tires a little bit, let's look at a couple of things real quick, there's these people like Bev Harris and Jim March, they're crazy, they're saying GEMS can be easily hacked, but let's take a quick look. You folks have not done that. You haven't done it. None of you wants to look through the telescope. Human nature has not changed from Galileo's day.

So my question to you is when are you going to look at GEMS. When are you going to actually see a quick demonstration of how easy it is to hack an election in GEMS. Bev Harris has got a laptop on her lap with GEMS and Microsoft Access and all the pieces necessary to demonstrate this right here with her. Would you like to take a look through the telescope right now?

CHAIRPERSON KYLE: I'll address my communications with Bev Harris with Bev Harris, Mr. March. There has been several over the last week. Her last communications had to do with getting the appropriate technical personnel on our side so we could evaluate it, and we're planning on doing that. So I'm glad Ms. Harris is here and I'm glad she's made the trip down and you're speaking on her behalf. And I'm hoping that after this meeting, since we have a number of people here, including Ms. Harris, we can schedule something.

MR. MARCH: Right.

CHAIRPERSON KYLE: Agree on a date and do exactly that and figure out the kind of people. She raised something that I hadn't considered and we need to find the right kind of person to look at it, having to do with audit capabilities that's a nontechnical.

So that's the extent of it that I'll engage with you. I'll be happy to discuss this with Ms. Harris after the meeting. And so the short answer is yes, we're going to --

MR. MARCH: My final comment, folks, is that until you actually look and see how GEMS actually runs, you're not doing your jobs as watchdogs. You have to do this, folks.

So that concludes my comments. Thank you.

CHAIRPERSON KYLE: Any other questions or comments?

PANEL MEMBER JEFFERSON: Just one. I would be happy to look at your demo later today assuming you don't have some kind of time conflict.

MR. MARCH: You got it. Thank you very much, sir.

CHAIRPERSON KYLE: Ms. Harris, with that introduction, would you like to?

MS. HARRIS: I'm Bev Harris. I'm the Executive Director of Black Box Voting, a nonprofit consumer protection organization for elections.



First of all, I do absolutely support, and I think it should be mandated that we do post the tapes at the polling place. This simply requires pushing the button and saying print two copies, not just one. All the rest is just smoke and mirrors, it doesn't take time, it takes 60 seconds. Yes, indeed, it is not for the benefit of the candidates, it is a critically important audit procedure. And when you see more of what GEMS is really designed to do, you will see that without this, we are really committing a fraud on the voters of California.

I wanted to quickly mention about the ABO programs which are in the optical scan and also in GEMS. The problems are that this company made up its own computer language for its optical scan system and for part of GEMS. It's not written in C++, not in COBOL, it's not written in visual basic. You have a guy in Canada who made up his own language. Why? Just to print a report that adds one plus one plus one. How can you certify something that's written in a language that even the computer science professors don't understand because it's all in Guy Lancaster's head in Vancouver, Canada.

I have a partial manual as to how his language works, but he never finished writing it. How can the national certify it. It's amazing to me. It's also unnecessary.

I had also suggested to Mr. Kyle that we get a yes or no answer from Diebold as to whether wireless communications can be used in its optical scan and its touchscreen system. The reason I ask that is because I went to McKinney, Texas and interviewed the people who ordered the parts and they're ordering wireless cards. And I have been told that it is not just in the touchscreens, it is also in the optical scan. I was told that, well, we'll have observers. Well, guess what, observers cannot observe air. We need to know yes or no on the record and not some petty answer like, well, it's enabled, but we don't use it. We cannot have wireless in these systems, the reason is because you can put information into the computer as well as take it out. You can be sitting outside with a laptop overriding the votes inside the touchscreens and no one could ever find out.

Okay. Now, GEMS. It is much worse than what I showed Howard Dean on national TV. On TV, Howard Dean, and he's not an experienced person, it took me 30 seconds, it took him 90 seconds, to change the election results in GEMS. But it was worse than that. You see, we only had a seven-minute segment. Actually, GEMS is prima facie evidence of intent to commit election fraud and that is the demonstration I have tried to be putting forth for the last year.

Now, I backed off on it just a little bit. Why? Because Diebold came out with GEMS 1.18.18 and I thought well surely they have read my report on the internet where it talks about illicit use of a double set of books and they probably fixed it. But then I got a hold of the release notes and it turned out they didn't fix it, they left it in there. So then they came out with GEMS 1.18.19 and I thought well maybe they fixed it now. No.

I just got back from a ten-state tour interviewing election officials and some of these election officials really did want to look through that telescope and they let me show them where the back door is. They had just installed 1.18.19 and the back door is still there and it's still set up for election fraud.

Now, those are strong words, but wait till you see what is in that program designed in there by Ken Clark and the senior programmers of Diebold, who, by the way, I'm getting real close to thinking I'm looking forward to seeing them in orange jumpsuits.

In the GEMS program, if you rig the election, it will pass the California recount. You set a special little Easter egg in there in one of the thousands of fields in the back door, you put in two characters. When those two characters are activated, you can count all the paper ballots you want and it will always pass the spot check,

although the totals are wrong. That is elegant, that is not by accident, that is designed into the program.

Thank you.

By the way, I will be here afterwards to show.

CHAIRPERSON KYLE: Thank you, Ms. Harris. And we look forward to talk with you and setting up a time.

Maureen Smith.

MS. SMITH: Maureen Smith, Peace and Freedom Party.

I'd like to say that I support the remarks of David Jefferson and suggestions of David Jefferson, and I'm thankful for the addition of Mr. Jefferson to this panel, because we're at least starting to get questions about potential for voter fraud or basically security issues.

Most of us, and when I say most, the people that I encounter, and there are basically hundreds of them, are extremely worried about any possibility of hacking from the outside or fixing from the inside the ballot count. And we also, most of the people I talk to do not think that the one percent is high enough to catch the voter fraud that can take place.

The California Peace and Freedom Party at its convention meeting on August 1st adopted the following resolution to be added to former resolutions on the voting issue. It's a one-sentence resolution. "The voter verified

paper ballot shall be the ballot for the count, recount, audit, and record, period." The same language appears in the Libertarian Party platform. And I know that the Green Party and the DNC have put out not that same language, but definitely strong language on the need for the voter verified paper ballot.

One issue especially on the record is last year, computer crashes erased detailed records from Miami Dade's County's first widespread use of touchscreen voting machines. The crashes occurred in May and November of 2003. They lost all of the September 2002 gubernatorial primaries and other elections. So there's nothing to investigate if, you know, there were an investigation of voter fraud in that election. And there were a lot of questions about that election.

We absolutely have to have paper ballots. The systems they are not reliable and they are not secure. I have some issues -- well, you'll call me, but I have an issue on Item 7 that I hope you'll let me mention later.

But I did want to reply to the Registrar of Voters, and I sympathize with registrar of voters, but there is some good news on the horizon, I think. The EAC met yesterday and they did discuss part of the HAVA bill that has to do with involving colleges, getting college people to be poll workers. And again it's part of a two-part thing of

recruiting college students to be really active as poll workers in elections and also to getting more people in that age category to vote, you know, to get them involved in elections and hopefully that will help Ms. Hench's problem, as well as the other registrars of voters.

I also know that poll workers do have extra work to do after elections, because I was an inspector for the recall election and we had to go through every single ballot for that election. We had to look at the holes punched and make sure that no one voted more than once in that. So we had another -- oh, 30 seconds.

We had a couple hours extra work to do after we closed the polls with that, and people actually didn't complain about it, which was amazing. Oh, and we also had half-time workers, people shared the shifts. If you can get people -- people can be paid for their work sometimes and be let off to go work half a day as a poll worker and share the shifts.

CHAIRPERSON KYLE: Thank you, Ms. Smith.

Dennis Paull.

MR. PAULL: Good morning. My name is Dennis Paull and I'm representing Commonweal Institute.

I did send in a notice which hopefully all of you have, but I'd like to make some comments about that. And I'd also like to -- since we're on the OS and not on GEMS,

I'd like to address the OS issues now and the GEMS issues a little later.

I'm unfamiliar with the Diebold OS machine in detail, but I'm familiar with the ES&S Eagle, which I notice is on your agenda at a later time. And I am the inspector at my precinct in Half Moon Bay in San Mateo County.

The Eagle is very similar in concept to the Diebold OS, and it does print out a tape. And just for the record, I would say it doesn't print it out very fast, and for a primary or election with a large number of candidates, it can take quite a lot of time. So Ms. Hench's comments about the delay that might occur because of printing out two copies, I think -- my first election was a primary in '02 and it took 20 minutes to print one copy because of the multitude of parties and candidates that were on the ballot.

Nonetheless, we do post the results outside, but I think that it's, and I'll come to this at a later time, but I think it's inadequate to think that just because we're posting it outside that that means something. In other words, posting it is not enough. We have to post it and then we have to check those numbers somehow against the numbers that come up in the official canvass. And I will address that later. If nobody is looking at the numbers, having them sit on the outside of a closed polling place doesn't really accomplish much.

Okay. In my county in San Mateo, the manual recount agrees with the machine count at least as far as I know. There are no errors that can be attributed to voting machine error. I do not know if the same is true of Diebold machines, but I ask you to find out. And the reason for this is that there were some Diebold e-mails, probably you all have heard of them, but at least one of them indicated that Diebold was aware that their machine was subject to a relatively small percentage of error caused by a mechanism, the scanning mechanism that's built into the machine. This is either the ballots weren't cut exactly correctly so that things didn't line up with their sensors or the mechanism that feeds the ballots would not feed the ballot in absolutely straight. And the result would be that maybe a ballot got slightly cocked and so it would maybe read some of the ballot but would miss some other parts of the ballot, and this was supposedly noted in the few percent category.

But a few percent is a few percent too many. And I think that the machines need to be designed in such a way as they don't miscount the vote or lose votes. And if the Diebold machine is subject to that kind of error such as was discussed in these internal memos among Diebold personnel, then I think we have a problem. And so I would ask the panel here how it is going to determine whether in fact when they do a manual recount whether the count comes out the



same as the machine count.

Unfortunately, the election code mandates there's a manual count, but it doesn't say anything about what happens if the numbers don't match. How do you then accommodate that? To simply say, well, okay, we'll accept the manual count is inadequate, because you're only counting a few percent. If you find the error, you either have to say, yes, this error is caused by the following thing and it's not going to happen anywhere except on the precinct that I counted, or you're going to have to say we've got a problem here, we're going to have to start counting more precincts with a manual count, because we found some that weren't right. So I would ask the panel to please try to identify what the level of machine count errors are and it's not anything that I believe has been addressed previously.

And I'll leave the GEMS things to later. Thank you very much.

CHAIRPERSON KYLE: Thank you, Mr. Paull.

Any comments or questions?

PANEL MEMBER JEFFERSON: I actually have a question about the previous speaker's question.

CHAIRPERSON KYLE: Ms. Smith.

PANEL MEMBER JEFFERSON: Ms. Smith, right.

Do we have any procedure requiring the counties to make an early optical copy of the canvass data so that a

crash on the server cannot lose that data? I realize we have the paper ballot backups, at least in the case of the optical systems, but do we have a procedure in which the counties are expected to make crash-proof copies on CD or DVD? I'm talking about the Florida incident revealed a couple of weeks ago when audit data and some canvass data was apparently lost until it was later found because of computer crashes on the servers holding the data. I'm looking to correct that potential problem in California by hoping that our counties made copies on CDs of the canvass data very early so that there's no possibility of losing the data to a server crash later.

MR. WAGAMAN: Well, again, as you said, this is an optical scan system, so if you happen to have the ballot images themselves, ballot images exist already with the paper ballot, so there's not that duplicate issue like you would have with the touchscreen DREs which is why they have had additional security requirements attached to them from April 30th. So the redundancy with this system is that there is the paper ballot, there is the flash memory card, and then there is the GEMS server itself, and then backups can be created of the GEMS server at any point in the process, so you can create backups there as well. There is not a requirement in the procedures that they create a second ballot image after scanning it from that server.

PANEL MEMBER JEFFERSON: Not for the optical systems, right?

MR. WAGAMAN: Correct.

One other point of clarification, just from the previous testimony, when we tested the system it did not have any wireless hardware on there, it was not wireless capable. We looked specifically at that issue. And so therefore the system being brought forward before the panel would not have wireless capabilities or hardware. It's not capable of it. There would have to be an additional hardware change to allow for it.

CHAIRPERSON KYLE: Okay. Thank you for addressing that point, because I was going to ask you to write a formal letter of that, but you beat me to it.

Okay. In that case, I would entertain a motion regarding staff's recommendation

PANEL MEMBER MOTT-SMITH: I move the staff's recommendation.

PANEL MEMBER CARREL: I second.

CHAIRPERSON KYLE: Okay. I'd like to offer two amendments to that. One is that we modify the language of 3.7.11. And I know, Caren, you crafted something that would strengthen the language and basically incorporate your suggestions, Mr. Jefferson, that the procedure is mandatory rather than suggested.

Am I citing the right reference?

PANEL MEMBER JEFFERSON: Yes. I'm sorry, you lost me for a second.

CHAIRPERSON KYLE: The production on paper of the results before the upload, and we can work on the wording of that. Secondly, and a procedural one, I wanted to make sure that one of the terms and conditions is that we have the ability, the agency has the ability, to amend and add additional security requirements for this particular system as we deem necessary at any time in the future.

MR. WAGAMAN: Is there any specific language on that or just --

CHAIRPERSON KYLE: Actually I have some from a prior certification, a certification that was recommended for the 1.18.19 in conjunction with the TS, and that allows the Secretary's office to add additional security provisions as we deem necessary at a later date. So I have recommended language that basically mirrors that, so if we come across something else and we want to add things, we can do so.

Mr. Miller.

PANEL MEMBER MILLER: Well, I certainly concur with those proposed amendments and I would hope that the mover and the seconder would agree to those.

CHAIRPERSON KYLE: Mr. Mott-Smith?

PANEL MEMBER MOTT-SMITH: I'm a little conflicted,

because on the one hand I don't see the necessity for the first recommendation, the second recommendation I do. I think we're proceeding based on an assertion that is based on an assumption that we haven't verified. And that assumption is that there is some mystery in the communication between what happens at the polling place and what happens at the central count in terms of whether or not ballots are actually counted as ballots at the central count facility as part of the canvass. We are assuming in Mr. Jefferson's motion or suggestion that they are not.

We are also assuming that the one-percent manual recount is not sufficient to catch those anomalies, if they are there. We are assuming that we can make an addition to procedure that we are unaware of the effect or the consequence in terms of election administration. And so I would personally prefer I think that we set that aside and put it into the context of your second suggestion which is if upon analysis we determine that it is not something that is useless or futile or does not accomplish anything, that we can then add it in pursuant to your second motion.

The conflict is basically that the only county that is here or that has testified basically said it didn't seem to be a problem. So on the one hand I'm tempted to just say, well, no problem, but I think I would prefer that somebody else step in and be the motionmaker or the

second, unless people agree with me that we take the second suggestion and that being that we can add conditions as appropriate, until we actually have some facts upon which to base that addition.

CHAIRPERSON KYLE: Some discussion on that, Mr. Jefferson, Mr. Carrel, anyone else?

PANEL MEMBER JEFFERSON: Yes. So regarding the question of whether the telephone call for uploading votes should be done before or after the output tape is printed, I think this is absolutely critical. John, I certainly am not assuming that there is fraudulent code that is in place here, my point is we simply don't know. Unless you actually read the code in both ends of that telephone conversation, you actually have no idea of what's going on. And we don't have that code, we don't have any guarantee at this time that we will actually be able to conduct the code review, nor do we know if we do get the code and conduct the code review, that we'll be finished in time or that that will be an item on the list. So to me this one safeguard of making sure the tape is printed before the votes are uploaded is so trivial, both have to be done anyway, the only question is to do one before the other, I find it hard to object to that. But it's absolutely crucial to close a security hole that is potentially there, and there's no reason not to close it.

The other suggestion that I had which was actually making two copies of the tape instead of one has already more or less been dropped in favor of that second language. And I can live with that for the moment and make that argument in the background. But the first one, it just seems to me so critical and so trivial that it's a shame not to take the opportunity to do it.

PANEL MEMBER CARREL: Mr. Chair.

CHAIRPERSON KYLE: Mr. Carrel.

PANEL MEMBER CARREL: The way that I read the procedure, doesn't the printing of the tape have to occur before the telephone connection?

MR. WAGAMAN: The way the procedures are written, it is sequentially beforehand, it's just does not explicitly say you must do this before that, but it is sequentially in order, the step you take before you move to the modeming is you print first.

MR. CARREL: I agree with Mr. Jefferson, I think it should be clarified. I believe it makes sense to do the printout and I personally don't have any views either way on one or two copies.

CHAIRPERSON KYLE: Thank you, Mr. Carrel.

I'm going to ask Ms. Daniels-Meade who's a wordsmith over here to read what you thought might be suggested language to modify 3.7.11.

PANEL MEMBER DANIELS-MEADE: I think we can probably take care of it by simply adding at 3.7.11 prior to what is currently written, add the words, "after printing and posting the final results tape, the precinct board will immediately transmit by telephone final results of the election to the central GEMS server, unless otherwise directed by elections official."

CHAIRPERSON KYLE: Thank you.

So I'm going to continue the discussion on whether to go forward with Mr. Jefferson's suggestion, as it's worded by Ms. Daniels-Meade.

Any other further pros or cons, Ms. Jones?

PANEL MEMBER JONES: No.

CHAIRPERSON KYLE: Mr. Miller?

PANEL MEMBER MILLER: I concur with the language. I especially concur with your amendment with respect to reserving the right to add additional requirements or conditions to enhance the accuracy, the reliability, and security of the system should circumstances warrant.

CHAIRPERSON KYLE: Mr. Kercher?

PANEL MEMBER KERCHER: No.

CHAIRPERSON KYLE: Mr. Mott-Smith?

PANEL MEMBER MOTT-SMITH: You need another motionmaker then.

PANEL MEMBER CARREL: I'll make a motion to adopt.



PANEL MEMBER MILLER: I'll second.

CHAIRPERSON KYLE: Okay. Let me ask the  
question --

PANEL MEMBER MOTT-SMITH: I wanted to finish that sentence actually. I don't personally see any reason why it couldn't go into the second condition where as a body, I think we have a responsibility to gather all of the information, information that we don't have here today is is this trivial or is it not trivial. It is trivial for us to gather that information, it's not trivial for us to require it before we understand what its impacts might be. As long as we have the ability to add it later, I just don't see why we would not take that step.

CHAIRPERSON KYLE: What would be your suggested method of gathering that information?

PANEL MEMBER MOTT-SMITH: The staff would be directed by the Chair to poll those counties that have optical scan systems or that modem results to, A, determine which ones modem results, and, B, to determine if such a change would have any practical considerations beyond what were mentioned. And my understanding of the procedures is that we can administratively alter or amend those procedures without necessarily involving the Voting Systems Panel. So if it is at the level of an administrative change and it's not controversial, then it would be just easy to add it in

without bringing it back.

PANEL MEMBER DANIELS-MEADE: Mr. Chair.

CHAIRPERSON KYLE: Ms. Daniels-Meade.

PANEL MEMBER DANIELS-MEADE: I just want to point out 3.7.10 already requires this thing to be printed. So all we're saying is post it. I don't see procedurally why it would be a problem for the elections officials if they have already got a mandate to print these final results.

MS. HENCH: You're asking for two copies to be printed.

PANEL MEMBER DANIELS-MEADE: We didn't say two copies though.

MS. HENCH: We have to have one copy to come back for our office.

PANEL MEMBER JEFFERSON: There are two separate issues here. I think there are really two separate questions about whether a second copy is made and or posted is one question, whether the first copy or both copies are made before the data is uploaded before that machine is connected to the telephone line, that's the other one. And I thought that's the one that we are talking about now.

CHAIRPERSON KYLE: That was my understanding also, that is specifically that the production of the results printed on paper occur prior to the upload of the final results, final unofficial results.

Okay. Well, I'm going to call the question then, and so the current recommendation is certification of 1.18.19 with use of 1.94w and 1.96.4 with the four conditions listed in the recommendation, plus what I'll call the David Jefferson Amendment of producing results on paper prior to that upload of the final results and the Mark Kyle Amendment of SOS retaining the right and option to require additional security measures and accuracy measures and functionality measures as it deems necessary or appropriate in the future to the system.

I am also going to raise one other issue that attempted to include an amendment that limits the use of this to November only, to be reappraised after November, but I think that's going to happen in its entirety with all systems come November 3rd.

So I'm going to call the question. All those in favor of the motion as it stands, please say aye.

(Ayes.)

CHAIRPERSON KYLE: All those opposed?

(Opposed.)

CHAIRPERSON KYLE: One opposed.

And all those abstaining?

(Abstain.)

CHAIRPERSON KYLE: One abstention.

The ayes have it.

So this agenda item is closed.

And I'll get you the language that's in the other certification.

MR. WAGAMAN: Thank you, Mr. Chair.

CHAIRPERSON KYLE: Mr. Miller has it actually.

I would like to go to the procedural point of meetings.

Mr. Wagaman, you had informed me informally the other day that due to the testing schedule that there are no items to bring forward for August 18th or 25th; is that correct?

MR. WAGAMAN: Correct. We're going to be going into about two and a half weeks of testing straight, so we won't have anything to bring forward during that time.

CHAIRPERSON KYLE: Okay. And has it been posted, the tentative cancellation of this?

MR. WAGAMAN: It was posted as tentatively cancelled, the 18th and 25th, correct.

CHAIRPERSON KYLE: Then I'm going to cancel both the 18th and the 25th. And there was a recommendation to schedule two as well, and I believe those were likewise posted for September 9th and September 14th; is that correct?

MR. WAGAMAN: Correct. They will cover either agenda items previously noticed that are continuing forward

along with additional applications we're expecting.

CHAIRPERSON KYLE: Okay. Then I'm also going to set those hearings, the 9th and 14th of September, so we're keeping on track with trying to meet as frequently as possible. Can you rewrite this and let me see it in the next day or so, something that will make it a little bit more intelligible as to what might be coming up on the 9th and the 14th, because it's hard to tell just looking at this. It just needs to be updated. This is off the table, this is done, this has been rolled over, this has been withdrawn.

MR. WAGAMAN: I will work with you on that.

CHAIRPERSON KYLE: Okay. So we'll get that posted. Maybe the posting is adequate, but if you and I could just review that and get a new posting that would be good.

PANEL MEMBER CARREL: Mr. Chair, may I ask a question?

CHAIRPERSON KYLE: Sure.

PANEL MEMBER CARREL: The 14th would be our last hearing regarding recertification or certification of any system or software for the November election, given the certification order which sets a 45-day deadline, which I believe is the 16th; is that correct?

CHAIRPERSON KYLE: September 17th.

PANEL MEMBER CARREL: September 17th, okay, thank you.

PANEL MEMBER MILLER: And that's the application deadline, I believe, not the action deadline.

PANEL MEMBER CARREL: So there still may be testing and certification afterwards, no one can apply after the 17th?

MR. WAGAMAN: That's correct. The intent of staff is to make sure that we have all those applications and that we conduct the testing prior to that, so we aren't rolling on past that date. So that's the intent of this. The agenda would cover all items we expect that would be applicable to the November election.

PANEL MEMBER CARREL: Okay, great. Thank you.

CHAIRPERSON KYLE: In other words, try to wrap it up by the 14th and have a decision shortly thereafter.

MR. WAGAMAN: Correct.

CHAIRPERSON KYLE: And certifications shortly thereafter.

Mr. Mott-Smith.

PANEL MEMBER MOTT-SMITH: Yes, Mr. Chair. I would like to change my vote on the last motion. I support the certification of the system, I object to the specific aspect of it. So in the big picture, I would like to be in support of it, I would just like to be noted that I would --

CHAIRPERSON KYLE: Duly noted.

PANEL MEMBER MOTT-SMITH: As I had indicated.

CHAIRPERSON KYLE: Okay. Then the record will reflect that there's one additional yes vote, and so it remains the ayes have it, with one abstention.

And duly noted. I think we should do that fact finding regardless of communication with the counties immediately, and I'd like to direct the staff to do so, to talk about the impact of that. And make sure we haven't stepped on the line inadvertently, and also to just give the courtesy to the counties of notifying them of that.

PANEL MEMBER CARREL: Mr. Chair, one more thing.

CHAIRPERSON KYLE: Go ahead.

PANEL MEMBER CARREL: The Mark-A-Vote, Ink-A-Vote residual vote reports are being prepared by staff, so that will be heard on the 9th?

MR. WAGAMAN: The intent of staff would be to have that for the 9th. We have the raw data, it's just not intelligible at this point.

PANEL MEMBER CARREL: Thank you.

CHAIRPERSON KYLE: Further comments or questions from the panel? Then I'm going to adjourn the meeting.

MS. SMITH: Please, Item 7.

CHAIRPERSON KYLE: There really isn't any other business, so if you have a random comment you'd like to

make, Ms. Smith.

MS. SMITH: Oh, it's urgent timewise.

CHAIRPERSON KYLE: Okay, go ahead.

MS. SMITH: Everyone according to the rules adopted by Secretary of State Shelley has the right to a paper ballot in the November election, however people are not going to know that. And what I wanted to -- well, besides asking you how the public is going to be informed of this, I want to make a specific suggestion that this information be printed on the front of the California ballot pamphlet that goes out to every voter, maybe with a little black box, you know, black lines around it saying that you have the right to a paper ballot at the polls. I mean everyone doesn't know that they have the right to an absentee ballot, but at least a lot of people know that.

And as a person who has served at the polls and posted the Voters Bill of Rights at the polls, I can tell you that I did not see anyone reading the Voters Bill of Rights at the polls when I served as an inspector. And so just having it posted at the polls is not going to ensure, but I think it is important to post it at the polls. I'm not saying don't do that, but I think it needs to be out there in as many ways as possible, and one way that it could reach everyone is through that voters pamphlet boldly someplace where it will be seen. And if it's on the front



cover it will be seen, whether or not the person ever opens up their voter pamphlet. Thank you.

CHAIRPERSON KYLE: A very legitimate concern. Not really relevant to the VSP Panel here today, but a very legitimate concern, and in fact we have plans to do as much voter education as possible, this would be one of the items that we would emphasize. I know that we did a mailing to a number of voters about absentee ballot voting as an option. I know the counties are planning on doing that. We plan on working with the counties.

The Secretary has spoken with the new Statewide County Association President, Conny McCormick, about some joint efforts and that kind of voter education. We will post it again this year, it will be in the Voter Bill of Rights, and if possible and we get the spending authority, we will do a voter education with a program this fall, but that's pending before the Department of Finance and the legislature right now. And if we get the funding authority, then we plan on spending some money on PSAs and radio announcements and minority language outreach and things of that nature on that very point. So it's a good point and I appreciate your concern.

Okay. Mr. Paull.

MR. PAULL: Dennis Paull, Commonweal again.

The hacking, not hacking, the ability of election

officials to modify the vote after the fact is still of great concern and I would actually like to be able to participate or to observe the demonstration that Bev Harris might be preparing for you.

I think it's important that we look at the whole election management process as something that needs to be opened up. Unfortunately, I believe that most counties do not make the details of their election procedures readily available to the public, and I think that this is a problem, and particularly as the public becomes more aware of the fact that, you know, gee, folks, there might be some problems here. These are problems that have been swept under the rug for centuries. It's not like there's anything new going on. Problems with elections have been documented for, you know, probably since the beginning of our country.

So I think the way to address these problems is to make the data available to the public as quickly as possible. And that means, as you've already noted, posting the results at the polls. But then we have to make sure that those results that are posted are read by somebody and are then compared to the election results later on in the canvass. And I strongly recommend that we ask the counties to put those numbers online as soon as possible, which means within some small number of hours following the poll closing. These are all the numbers that were already being

input into GEMS, all we're doing is saying GEMS or whatever different machine software might be available, other vendors.

I'm just asking that those numbers be published online. And once they're published, then a whole slew of potential difficulties that might occur in how the numbers are manipulated will simply go away. Those problems won't exist as soon as the public is allowed to see the numbers starting early in the election and updated as the canvass proceeds. Eventually it ends up all being more or less online, and I don't know whether all counties post the statement of the vote online or not, but I suspect that most of them do. And so they already have the ability to compare that report, I'm just saying publish that report starting early and update it as the canvass proceeds. And that eliminates a huge number of potential problems, because now you can have members of all --

CHAIRPERSON KYLE: Mr. Paull, I'm going to ask you to wrap it up.

MR. PAULL: Okay. You have all the partisans involved, all sides, and independently look at the results and see how everything is going, because it really would work out very well.

CHAIRPERSON KYLE: Your point's well taken and we'll communicate that to the counties. And there will be

other opportunities for further testimony on September 9th and 14th. And I believe, if I'm not mistaken, from interpreting Ms. Harris' statement, she's planning on doing some kind of a demonstration shortly after this meeting that I'm assuming that folks would be welcome to participate.

Ms. Harris, I would make a request that you speak with our staff so that we can set up a meeting with not only you, but some of the folks that we talked about earlier yesterday or whatever day that was. I'm going to suggest next Wednesday, but we can figure out what might work with everybody, including Mr. Jefferson since he's here today.

Having said that, the meeting is adjourned. Thank you all for attending.

(Thereupon the meeting of the Voting  
Systems Panel was concluded at 11:49  
a.m. on August 11, 2004.)

## CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Voting Systems Panel proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Voting Systems Panel proceedings, or in any way interested in the outcome of said Voting Systems Panel proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345